

SHARTSIS FRIESE LLP
ONE MARITIME PLAZA
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SAN FRANCISCO, CA 94111

SHARTSIS FRIESE LLP
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Attorneys for Defendant
TRG CUSTOMER SOLUTIONS, INC. d/b/a
TELESPECTRUM

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DAVID KECK, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, a Delaware
corporation; CENTRAL STATES
INDEMNITY CO. OF OMAHA, a
Nebraska corporation; CSI PROCESSING
LLC, a Nebraska company; TRG
CUSTOMER SOLUTIONS, INC. d/b/a
TELESPECTRUM,

Defendants.

Case No. CV 08-1219 CRB

**TRG CUSTOMER SOLUTIONS, INC.'S
ANSWER TO SECOND AMENDED
COMPLAINT**

DEMAND FOR JURY TRIAL

Defendant TRG Customer Solutions, Inc. d/b/a Telespectrum ("Defendant") alleges:

1. Defendant denies the allegations of paragraph 1.
2. Defendant denies the allegations of paragraph 2 for lack of information and belief.
3. Defendant denies the allegations of paragraph 3.
4. Defendant denies the allegations of paragraph 4 for lack of information and belief.
5. Defendant denies the allegations of paragraph 5 for lack of information and belief.
6. Defendant denies the allegations of paragraph 6 for lack of information and belief.

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- 1 7. Defendant denies the allegations of paragraph 7 for lack of information and belief.
- 2 8. Defendant denies the allegations of paragraph 8 for lack of information and belief.
- 3 9. Defendant denies the allegations of paragraph 9 for lack of information and belief.
- 4 10. Defendant admits the allegations of paragraph 10.
- 5 11. Defendant denies the allegations of paragraph 11.
- 6 12. Defendant denies the allegations of paragraph 12 for lack of information and
- 7 belief.
- 8 13. Defendant denies the allegations of paragraph 13 for lack of information and
- 9 belief.
- 10 14. Defendant denies the allegations of paragraph 14 for lack of information and
- 11 belief.
- 12 15. Defendant denies the allegations of paragraph 15 for lack of information and
- 13 belief.
- 14 16. Defendant denies the allegations of paragraph 16 for lack of information and
- 15 belief.
- 16 17. Defendant denies the allegations of paragraph 17 for lack of information and
- 17 belief.
- 18 18. Defendant denies the allegations of paragraph 18 for lack of information and
- 19 belief.
- 20 19. Defendant admits that plaintiff received at least one telemarketing call. Defendant
- 21 denies all other allegations in this paragraph.
- 22 20. Defendant admits that an audio record was made of a call with plaintiff, but the
- 23 transcription is incomplete. Defendant denies all other allegations in this paragraph.
- 24 21. Defendant denies the allegations of paragraph 21 for lack of information and
- 25 belief.
- 26 22. Defendant denies the allegations of paragraph 22 for lack of information and
- 27 belief.
- 28 23. Defendant denies the allegations of paragraph 23 for lack of information and

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1 belief.

2 24. Defendant denies the allegations of paragraph 24 for lack of information and
3 belief.

4 25. Defendant denies the allegations of paragraph 25 for lack of information and
5 belief.

6 26. Defendant denies the allegations of paragraph 26 for lack of information and
7 belief.

8 27. Defendant denies the allegations of paragraph 27 for lack of information and
9 belief.

10 28. Defendant denies the allegations of paragraph 28.

11 29. Defendant admits generally that the statutes cited govern defendant's practices.
12 Defendant denies all other allegations in this paragraph.

13 30. Defendant admits the allegations in paragraph 30.

14 31. Defendant admits that the partial quotation from the regulation is accurate.

15 32. Defendant denies the allegations of paragraph 32 for lack of information and
16 belief.

17 33. Defendant denies the allegations of paragraph 33 for lack of information and
18 belief.

19 34. Defendant denies the allegations of paragraph 34 for lack of information and
20 belief.

21 35. Defendant denies the allegations of paragraph 35 for lack of information and
22 belief.

23 36. Defendant denies the allegations of paragraph 36 for lack of information and
24 belief.

25 37. Defendant denies the allegations of paragraph 37.

26 38. Defendant admits that its telemarketing calls are made pursuant to standardized
27 scripts and practices and that it provides similar training to its telemarketers. Defendant denies all
28 other allegations in paragraph 38.

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- 1 39. Defendant denies the allegations of paragraph 39.
- 2 40. Defendant denies the allegations of paragraph 40.
- 3 41. Defendant denies the allegations of paragraph 41.
- 4 42. Defendant denies the allegations of paragraph 42.
- 5 43. Defendant denies the allegations of paragraph 43.
- 6 44. Defendant incorporates its denials and admissions of paragraphs 1 through 43
- 7 above.
- 8 45. Defendant admits the existence and purpose of the statute and denies all other
- 9 allegations in paragraph 45.
- 10 46. Defendant denies the allegations of paragraph 46.
- 11 47. Defendant denies the allegations of paragraph 47.
- 12 48. Defendant admits acting as BofA's agent telemarketer but denies all other
- 13 allegations in paragraph 48.
- 14 49. Defendant denies the allegations of paragraph 49 for lack of information and
- 15 belief.
- 16 50. Defendant denies the allegations of paragraph 50.
- 17 51. Defendant denies the allegations of paragraph 51.
- 18 52. Defendant denies the allegations of paragraph 52.
- 19 53. Defendant denies the allegations of paragraph 53.
- 20 54. Defendant denies the allegations of paragraph 54.
- 21 55. Defendant denies the allegations of paragraph 55.
- 22 56. Defendant incorporates its denials and admissions of paragraph 1 through 55
- 23 above.
- 24 57. Defendant admits that the quotation is accurate and denies all other allegations in
- 25 paragraph 57.
- 26 58. Defendant denies the allegations of paragraph 58.
- 27 59. Defendant denies the allegations of paragraph 59.
- 28 60. Defendant denies the allegations of paragraph 60.

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61. Defendant incorporates its denials and admissions of paragraphs 1 through 60 above.

62. Defendant denies the allegations of paragraph 62 for lack of information and belief.

63. Defendant denies the allegations of paragraph 63 for lack of information and belief.

64. Defendant admits that the quotation is accurate and denies all other allegations in paragraph 64.

65. Defendant denies the allegations of paragraph 65.

66. Defendant denies the allegations of paragraph 66.

67. Defendant denies the allegations of paragraph 67.

68. Defendant denies the allegations of paragraph 68.

69. Defendant denies the allegations of paragraph 69.

70. Defendant incorporates its denials and admissions in paragraphs 1 through 69 above.

71. Defendant denies the allegations in paragraph 71 for lack of information and belief.

72. Defendant admits that the quotations are accurate and denies all other allegations in paragraph 72.

73. Defendant denies the allegations of paragraph 73.

74. Defendant denies the allegations of paragraph 74.

75. Defendant denies the allegations of paragraph 75.

76. Defendant incorporates its denials and admissions of paragraphs 1 through 75 above.

77. Defendant denies the allegations of paragraph 77.

AFFIRMATIVE DEFENSES

78. Consent: Plaintiff consented to all actions based on which he purports to state his claims.

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79. Wrong Party: To the extent that Plaintiff may have suffered some injury, if at all, a party other than Defendant is responsible for such wrongdoing.

80. No Causation: Any injuries to Plaintiff were not proximately caused by the actions of Defendant.

81. No Injury: Plaintiff has not suffered any legally cognizable damages and was already made whole by defendant Bank of America.

82. Defendant as agent for Bank of America, adopts and incorporates all affirmative defenses pleaded by Bank of America.

WHEREFORE, Defendant prays for judgment as follows:

1. The Plaintiff take nothing by way of his complaint and his claims dismissed with prejudice;

2. For costs of suit; and

3. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

TRG Customer Solutions, Inc. d/b/a Telespectrum demands a trial by jury.

DATED: July 23, 2008

SHARTSIS FRIESE LLP

By: /s/ Robert Charles Ward

ROBERT CHARLES WARD

Attorneys for Defendant
TRG CUSTOMER SOLUTIONS, INC. d/b/a
TELESPECTRUM

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PROOF OF SERVICE

I, Janis L. Ing, declare:

I am a citizen of the United States and employed in the City and County of San Francisco, California by Shartsis Friese LLP at One Maritime Plaza, Eighteenth Floor, San Francisco, California 94111. I am over the age of eighteen years and am not a party to the within-entitled action.

On July 23, 2008, at Shartsis Friese LLP located at the above-referenced address, and, pursuant to California Rules of Court, Federal Rules of Civil Procedure, and local rules, I served on the interested parties in said cause a copy of the within document(s):

TRG CUSTOMER SOLUTIONS, INC.'S ANSWER TO SECOND AMENDED COMPLAINT

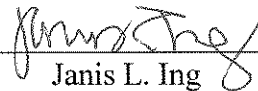
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid in accordance with the firm's practice, of which I am familiar, of collection and processing correspondence for mailing on the same day to the person(s) at the address(es) set forth below:
- ☐ by consigning the document(s) listed above to an express delivery service for guaranteed delivery on the next business day to the person(s) at the address(es) set forth below:
- ☐ by personal delivery by messenger service of the document(s) above to the person(s) at the address(es) set forth below:
- ☐ by facsimile transmission on this date before 5:00 p.m. (PST) of the document(s) listed above from sending facsimile machine main telephone number (415) 421-2922, and which transmission was reported as complete and without error (copy of which is attached), to facsimile number(s) set forth below: (☐ by agreement / ☐ not by agreement)
- ☐ by electronically delivering the document(s) listed above on this date from electronic address sflaw.com, and after which transmission I did not receive within a reasonable time any electronic message or other indication that the transmission was unsuccessful, to electronic mail address(es) set forth below: (☐ by agreement / ☐ not by agreement)

Alan R. Brayton
Charlotte Elizabeth Scott
Brayton & Purcell
222 Rush Landing Road
Novato, CA 94945

1 Thomas E. Gilbertsen
2 Kelley Drye & Warren LLP
3 3050 K Street, N.W.,
4 Suite 400
5 Washington, DC 20007

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct.

8 Executed on July 23, 2008, in San Francisco, California.

9 
10 Janis L. Ing

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